

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

PENN-AMERICA INSURANCE  
COMPANY,

Plaintiff,

v.

AMERIFIT WELLNESS CENTER,  
L.L.C., *et al.*

Defendants.

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CIVIL ACTION NO. H-10-1565

**ORDER ON MOTIONS TO DISMISS**

On September 24, 2010, the court heard argument on and considered the following motions:

Defendant McClelland & Hine, Inc.'s and Jerome Nash's 12(b)(6) Motion to Dismiss for Plaintiff's Failure to State a Claim and 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry No. 11).

Defendants Amerifit Wellness Center L.L.C., James Devin Parrish and John Bergeron's 12(b)(1) and 12(b)(1) Motions to Dismiss (Docket Entry No. 12).

Defendant McClelland & Hine, Inc.'s and Jerome Nash's Motion to Dismiss Cross/Plaintiffs/Defendants Amerifit Wellness Center, L.L.C., James Devin Parrish and John Bergeron's Cross-Claim (Docket Entry NO. 21).

After considering the motions, responses, and arguments of the parties, this court enters the following order:

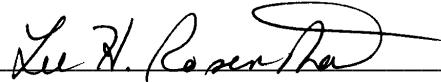
1. Defendants Amerifit Wellness Center, L.L.C., James Devin Parrish and John Bergeron's 12(b)(6) and 12(b)(1) Motions to Dismiss, (Docket Entry No. 12), are denied.

2. Defendant McClelland & Hine, Inc.'s and Jerome Nash's 12(b)(6) Motion to Dismiss for Plaintiff's Failure to State a Claim and 12(b)(1) Motion to Dismiss for Lack of Subject-Matter Jurisdiction, (Docket Entry No. 11), are granted.

3. Defendant McClelland & Hine, Inc.'s and Jerome Nash's Motion to Dismiss Cross/Plaintiffs/Defendants Amerifit Wellness Center, L.L.C., James Devin Parrish, and John Bergeron's Cross-Claim, (Docket Entry No. 21), is granted.

4. The claims or cross-claims asserted by Plaintiff Penn-America Insurance Company or Defendants/Cross-Plaintiffs Amerifit Wellness Center L.L.C., James Devin Parrish, and John Bergeron against Defendants/Cross-Defendants for monetary damages are dismissed, without prejudice.

SIGNED on October 13, 2010, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal  
United States District Judge